

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE PARKER PEN COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3032

Decision No. CU-1420

AMENDED PROPOSED DECISION

By Proposed Decision issued February 28, 1968, this claim was denied for failure of claimant to sustain the burden of proof. Additional evidence having been submitted, and the matter considered, it is

ORDERED that the Proposed Decision be and it is hereby amended as follows:

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

Claimant corporation, by an authorized officer, has certified that the corporation was organized as a Wisconsin corporation in 1892, that at all times between 1892 and the presentation of this claim more than 50% of the outstanding capital stock has been owned by United States nationals, and that on November 20, 1967, 87.02% of the outstanding capital stock was owned by residents of the United States who were presumed to be nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record shows that claimant made sales and shipments of merchandise to various Cuban firms during 1959 and 1960. Payment in each transaction was to have been made by bank draft. A summary of these transactions is set out below, showing the net amount due claimant on each transaction, and either the date payment became due or the date upon which claimant was informed by the collecting bank in Cuba that payment was made. Where applicable, credits have been deducted in determining the net amount due claimant. An officer of the claimant corporation has stated that the corporation has never received the funds.

<u>Consignees</u>	<u>Amount</u>	<u>Date Due Or Of Information</u>
Andres Rodriguez	\$ .407.73	October 30, 1959
	.521.87	December 16, 1959
	.404.39	May 18, 1960
Celestino Gutierrez	.993.09	November 16, 1959
Papelera Regla S.A.	.723.87	October 23, 1959
Enrique Garcia Novoa	.313.42	November 13, 1959
Hnos. Lavernia	.257.93	November 24, 1959
Sergio Fernandez & Cia.	\$1,036.43	November 25, 1959
Joaquin Ruhi	655.73	December 30, 1959
Salomon Hajje y Hno.	260.40	January 6, 1960
Mateo Forteza	947.25	December 28, 1959
Manuel Pardillo Fernandez	431.66	January 7, 1960
	580.18	February 10, 1960
	521.43	February 12, 1960
Union Comercial de Cuba	1,450.07	May 9, 1960
	1,206.44	May 4, 1960
	1,171.51	December 28, 1959
	295.51	December 28, 1959
	1,164.51	January 14, 1960
	1,016.50	February 5, 1960
	2,408.63	February 10, 1960
	1,832.34	February 17, 1960
	934.01	February 16, 1960
	6,226.12	February 25, 1960
	1,686.02	March 5, 1960
	6,216.32	April 1, 1960

<u>Consignees</u>	<u>Amount</u>	<u>Date Due Or Of Information</u>
Jose Fernandez	\$ 303.95	February 5, 1960
Raul Ley	456.67	January 27, 1960
Imprenta Ramentol S.A.	731.91	January 20, 1960
Dogil S.A.	4,434.51	October 28, 1959
	4,671.81	December 2, 1959
	2,919.84	December 2, 1959
	4,670.57	December 28, 1959
	2,920.87	December 28, 1959
Compania Mercantile	3,626.93	January 12, 1960
Sastreria Radiocentro	742.64	January 13, 1960
	2,980.40	February 2, 1960
	235.81	June 16, 1960
Domingo Sanchez	881.10	January 27, 1960
	684.41	April 8, 1960
	823.29	May 19, 1960
Juan F. Sariol	265.33	March 31, 1960
R. Torres y Cia.	550.93	January 15, 1960
Juan Ferrer	375.98	February 9, 1960
Joaquin Sola Hernadez	266.00	March 14, 1960
Gordon y Curras	154.78	March 14, 1960
Victor de Vries	1,316.60	February 4, 1960
Importaciones Pernas & Gomez	636.51	December 17, 1959
	646.37	December 17, 1959
	\$1,218.77	December 17, 1959
Alberto Lovinger	523.38	December 17, 1959
Madiedo Lopez y Cia.	1,386.17	March 14, 1960
Daniel Fernandez	1,045.74	May 26, 1960
Francisco Nieto Cia.	340.59	December 13, 1960
Joyeria Cronos S.A.	1,072.71	February 22, 1960
Alfredo Guri	1,727.22	November 17, 1960
Bernardo Praschnik	576.39	March 24, 1960
Lores y Hnos	1,749.55	December 15, 1959
	6,722.97	January 6, 1960

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<u>Consignees</u>	<u>Amount</u>	<u>Date Due Or Of Information</u>
Compania Mercantil La	\$5,390.14	April 4, 1960
Sucursal S.A.	4,401.73	March 23, 1960
	4,401.73	April 7, 1960
Centro Comercial Textil S.A.	476.40	April 8, 1960
Los Precios Fijos S.A.	414.40	March 30, 1960
Madiedo Loredo y Cia.	3,108.98	March 24, 1960
Lorenzo de Toro	1,280.62	June 8, 1960
Jose F. Martinez	<u>144.34</u>	January 26, 1960
Total	\$104,942.40	

The Government of Cuba, on September 29, 1959, published its Law 568 concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966], and the Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on the dates shown further below.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims

Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See the Claim of Lisle Corporation, Claim Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the losses occurred, to date on which provisions are made for the settlement thereof, as follows:

<u>From</u>	<u>On</u>
October 23, 1959	\$ 723.87
October 28, 1959	4,434.51
October 30, 1959	407.73
November 13, 1959	313.42
November 16, 1960	993.09
November 24, 1959	257.93
November 25, 1959	1,036.43
December 2, 1959	7,591.65
December 15, 1959	1,749.55
December 16, 1959	521.87
December 17, 1959	3,025.03
December 28, 1959	10,005.71
December 30, 1959	655.73
January 6, 1960	6,983.37
January 7, 1960	431.66
January 12, 1960	3,626.93
January 13, 1960	742.64
January 14, 1960	1,164.51
January 15, 1960	550.93
January 20, 1960	731.91
January 26, 1960	144.34
January 27, 1960	1,337.77
February 3, 1960	2,980.40
February 4, 1960	1,316.60
February 5, 1960	1,320.45
February 9, 1960	375.98
February 10, 1960	2,988.81
February 12, 1960	521.43
February 16, 1960	2,661.23
February 17, 1960	1,832.34
February 22, 1960	1,072.71
February 25, 1960	6,226.72
March 5, 1960	1,686.02
March 14, 1960	1,806.95
March 23, 1960	4,401.73
March 24, 1960	3,685.37
March 30, 1960	414.40
March 31, 1960	265.33
April 1, 1960	6,216.32
April 4, 1960	5,390.14
April 7, 1960	4,401.73
April 8, 1960	1,160.81
May 4, 1960	1,206.44
May 9, 1960	1,450.07

<u>From</u>	<u>On</u>
May 18, 1960	\$ 404.39
May 19, 1960	823.29
May 26, 1960	1,045.74
June 8, 1960	1,280.62
June 16, 1960	235.81
December 13, 1960	340.59
Total	<u>\$104,942.40</u>

The following Certification of Loss will be entered and in all other respects the Proposed Decision is affirmed.

CERTIFICATION OF LOSS

The Commission certifies that THE PARKER PEN COMPANY suffered a loss, as a result of the actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of One Hundred Four Thousand Nine Hundred Forty-Two Dollars and Forty Cents (\$104,942.40) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

NOV 27 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE PARKER PEN COMPANY

Claim No. **CU** 3032

Decision No. **CU** - 1420

Under the International Claims Settlement  
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$105,336.88, was presented by THE PARKER PEN COMPANY, and is based upon the asserted loss of payment for merchandise shipped to Cuba. An officer of claimant has stated that more than 50% of claimant's outstanding capital stock was held by nationals of the United States.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the loss of payment for merchandise shipped to Cuba. However, no documentary evidence was submitted in support of this claim, filed on May 1, 1967. Accordingly, by Commission letter of October 2, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. No evidence in response to this correspondence has been received to date.

On November 7, 1967, claimant was invited to submit any evidence available to it within 45 days from that date, and claimant was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record.


Subsequently, on December 21, 1967, claimant requested and was given additional time of 30 days within which to submit evidence. No evidence has since been submitted.

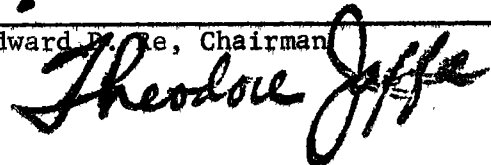


The Commission finds that claimant has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,  
and entered as the Proposed  
Decision of the Commission

**FEB 28 1968**

  
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Edward P. Re, Chairman

  
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Theodore Jaffe, Commissioner

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